***United States Court of Appeals***

***for the Second Circuit***


# APPELLEE'S BRIEF

75-2078

To be argued by
A. SETH GREENWALD

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES ex rel. STEPHEN P. SAPIENZA, Petitioner, on behalf of ALFRED A. ARGENTINE,

Relator-Appellant,

-against-

LEON J. VINCENT, Warden, Green Haven Correctional Facility,

Respondent-Appellee,

----------X

# BRIEF FOR APPELLEE


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Docket No. 75-2078

BRIEF FOR APPELLEE

## Questions Presented

1. Was appellant denied the right to counsel?

2. Was appellant denied the right to proceed pro se, when such a request is not made until well into the trial?

3. Was appellant denied the compulsory process of witnesses?

4. Was appellant denied the right to confront witnesses?

5. Was there any evidence of prejudicial pre-trial publicity?

6. Did appellant by-pass state appellate remedies?

## Statement

This is an appeal from an order of the United States District Court for the Eastern District of New York (Judd, D.J.) denying appellant's application for a writ of habeas corpus. The order was entered April 7, 1975. Notice of appeal was filed April 29, 1975 (137a et. seq.).* The District Court issued a certificate of probable cause on May 6, 1975.

## Factual Background

The appellant, Alfred Argentine, at the time of the denial of the application was incarcerated under the custody of the New York State Department of Correctional Services pursuant to a judgment of the County Court, Nassau County, January 28, 1964. Appellant was convicted by a jury on two counts of forgery in the second degree and one count of grand larceny in the second degree. Sentence was ultimately imposed on September 25, 1964 and consisted of ten to twenty years on the first two counts, and two and one-half to ten years on the third count, all concurrent terms.



* Numbers in parentheses or otherwise followed by "a" refer to Appendix. Numbers, infra, preceded by "T." refer to transcript of trial before Judge Kelly in the County Court, Nassau County. Similarly, preceded by "C.N." refer to transcript of coram nobis hearing before Judge Gibbons, also in the County Court, Nassau County.

The events leading up to the trial are summarized as follows. Appellant was arrested in September, 1963 and indicted October 1, 1963. Not having retained counsel, the Public Defender was appointed to represent him. James J. McDonough, an experienced attorney and head of the Public Defender's Office on December 16, 1963 asked to be relieved because of appellant's hostility as evidenced by the failure to discuss the facts of the case with his attorney. The motion was denied. It was later renewed on January 6, 1964* when the indictment first came on for trial. It was claimed a Michael J. Winters was retained and that attorney would need an adjournment until January 15. The request for an adjournment was denied and trial begun. The next day, on appellant's attorney's (Mr. McDonough) motion, a mistrial was granted due to a story printed in Newsday (January 7, 1964) concerning appellant's criminal arrest record. This item is at 43a of the Appendix where it is undated.

The new trial began January 20, 1964, some two weeks later. Once again Mr. McDonough asked to be relieved**.



* This summary is drawn from Judge Judd's opinion. At places it is in error. Thus, at 139a this date is given as "1974", an obvious typographical error.

** The opinion states "Argentine asked leave to proceed pro se," 139a. This is erroneous as will be more fully discussed, infra, Point I, p. 6 et seq.

However, Mr. Winters was not in the case because no one would pay his fee. Various motions were made. Suffice it to say, all were denied and the trial went forward.

As described by Judge Judd, the charge was that Argentine on August 1, 1963 submitted a check ($356.91) to a travel agency for a trip to Florida. The People presented their case through (1) Lewis Horton, whose check was forged, (2) Jeffrey Wartenberg, an employee of the travel agency, (3) Sanford Hershy, the owner of the agency, (4) Richard Gapin, a clerk, (5) Mary Romandette, who went to Florida with appellant on the trip. Two detectives also testified. The People rested.

When time came for the defense, Mr. McDonough informed the Court of his problems. Only three of seven persons Argentine wanted subpoenaed could be located. One was subpoenaed but was not in court. An adjournment of one day was granted to produce the witness, Miss Milo, but she did not come in the next day. An offer of proof was made. Ultimately, the defense rested without putting in any evidence.

The jury convicted Argentine.

## Post-Trial Remedies

(1) Although a notice of appeal was filed, the appeal was never perfected. It was dismissed by the Appellate Division, October 3, 1966 (146a).

(2) Coram nobis. Relevant ones are those of Judge Gibbons, July 8, 1971 (54a) and Judge Altimari, October 10, and November 16, 1973 (33a, 37a).

Other applications are recited in Judge Judd's decision, starting at 146a.

## Decision Below:

In a 25 page decision, the District Court (Judd, D.J.) reviewed, as best as possible, the whole course of appellant's litigation*. (137a-162a). Judge Judd saw five issues presented, (1) choosing counsel (and not any issue as to proceeding pro se); (2) calling witnesses; (3) being given information to impeach witnesses; (4) Lewis Horton's "perjurious" testimony and (5) pre-trial publicity.

The decision reviews appellant's crime, the trial and post-conviction applications. At 154a, the involved history of the federal habeas corpus was recited. Included was appellant's two substitutions of attorneys without any formalities or notice.



* We submit this is entirely due to appellant's purposeful discharge of attorneys, failing to be candid, and general desire to confuse all concerned.

After declining to find Argentine had failed to exhaust his state remedies (158a) but without actually ruling on deliberate by-pass, Judge Judd accepted the findings of Judge Gibbons after an evidentiary hearing (and Judge Altimari)*, 28 U.S.C. § 2254(d). Reviewing the several claims, the decision rejected them in toto.

In conclusion, Judge Judd suggested to petitioner several alternatives. Apparently, they have not been acted on. Perhaps this is because appellant has been paroled since the rendering of the order appealed from.

## POINT I

### APPELLANT WAS NOT DENIED HIS CONSTITUTIONAL RIGHT TO PROCEED PRO SE.

The appellant, encouraged by the Supreme Court's recent decision in Faretta v. California, ____U.S.____, 45 L. Ed. 2d 562 (1975), has shifted the main thrust of his attack in this appeal to the denial of a motion to proceed pro se. The appellant contends that he made the request before trial, or "on the eve of trial". This is simply not the case and the record



* It can be concluded that the state coram nobis evidentiary hearing before Judge Gibbons met all the requirements in Townsend v. Sain, 372 U.S. 293, 318 (1963), as incorporated in 28 U.S.C. § 2254(d). Judge Altimari did not hold an evidentiary hearing.

of the trial, coram nobis and Judge Gibbons' specific finding bear this out. Regardless of any off-hand statements of Judges Kelly and Judd, or appellant's unsupported assertions, the record must control and this Court can review it to confirm the following.

The appellant, almost continuously was asserting his desire to discharge the Public Defender, Mr. McDonough and substitute retained counsel. As Judge Judd said (139a), on January 20, 1964, before the selection of the jury, Mr. McDonough asked again to be relieved. However, Argentine did not ask leave to proceed pro se. The minutes of the trial (T. 2-24), which we have re-examined fail to show any request by Argentine. See especially T. 2-5*.

When the question of representation or right to proceed pro se came before Judge Gibbons in the coram nobis hearing, appellant's then attorney and the Judge specifically included it in the issues before him (CN3). After a two day



* It is interesting to note that on pp. 7-8 of appellant's brief, there is reference to several motions at the start of trial. Record references are provided for all assertions except the request to proceed pro se (p. 3 of brief).

evidentiary hearing encompassing 405 pages, Judge Gibbons made his findings. These included (58a):

> "In any event, the trial under indictment 19147 actually commenced on January 20, 1964. After the trial was nearing its end, a motion was made on behalf of defendant for the first time, to allow him to represent himself to the conclusion of the case. This motion was denied, and this ruling forms the basis of defendant's second attack on the validity of the judgment herein". (emphasis supplied)

An examination of the coram nobis minutes reveals that Argentine relied on Judge Kelly's memorandum as to asking to proceed pro se but not that he asked for same (C.N. 106). Appellant claimed only the right to choose counsel (C.N. 162-164). There was nothing more Argentine wished to say (C.N. 170). On cross-examination, he made no reference to a pro se application (C.N. 265-266). However, he did claim the record would show a pro se application (C.N. 266)("A. No. You had better read the record again")* He also stated he had never stood up and told the trial court he wanted to defend himself (C.N. 339). On C.N. 371, there is a final wrap-up by Argentine's attorney indicating there was nothing further.



* We have read the record again. The record indicates Mr. Argentine was in error.

Having heard the witnesses and read the record, Judge Gibbons found that the pro se application was not made until the "trial was nearing its end. . .", supra (58a). Judge Judd accepted the findings of the coram nobis hearing (158a-159a).

Additional evidence in the record that Argentine never moved before trial to proceed pro se, is the lack of any mention in Exhibit "G" to the Amended Petition (45a). The Second Amended Petition admits there is no basis in the Trial Record of such a request (100a). The Amended Petition does not mention it (19a).

In face of this, appellant relies on the "versions of Kelly, Judd and Argentine" (Br., p. 15). Judge Kelly did state Argentine requested to proceed "pro se on the eve of trial" (51a). However, this was reversed on appeal, People v. Argentine, 35 A D 2d 819, 317 N.Y.S. 2d 599 (2d Dept. 1970). It was held that Argentine was entitled to a hearing. In fact the trial minutes were not part of the record before Judge Kelly on the coram nobis. It is axiomatic that a reversed decision cannot be authority for anything. After the reversal, Judge Gibbons held the hearing and made the controlling findings, including that there was no request to proceed pro se until trial was almost finished, supra (58a). Judge Judd accepted this and, while there is the

statement (139a) on Argentine asking leave to proceed pro se on January 20, 1964 before selection of the jury, we submit it is in error, not having any support in the record.* This Court can read the minutes of the trial and coram nobis and satisfy itself that the record is contrary to Judge Judd's statement (139a).

Even if the record supported appellant, Faretta v. California, supra, hardly supports the contention reversal is required (Br., p. 15). Faretta, supra, 45 L. Ed 2d at, 566 involved a defendant who invoked his right "(w)ell before the date of trial. . ." It was granted but "still prior to trial", the California State court judge reversed himself, and appointed counsel over defendant's objection. Ibid. at 567. In fact, the Supreme Court noted, fn. 9, 10 that New York accords a defendant the right the California court denied. Thus, a right to proceed pro se on the "eve of trial" need not be automatically entertained**. Faretta, in conclusion, ibid. at 582, lays great stress on the fact the request was "weeks before trial" and was clear and unequivocal.



* Exhibit A (27a) to the Amended Petition, recites an equivocal pro se application (30a). The Appendix blurs the date it was submitted; it is "January 28, 1974".

** This is not to say that any grant of a right to proceed pro se at any time is not fraught with problems. Faretta, ibid. at 581-582. For one thing, has defendant "knowingly and intelligently" waived counsel, Johnson v. Zerbst, 304 U.S. 458, 464-465 (1938).

On the other hand, appellant's position on the eve of trial was that a Mr. Winters was coming into the case, not that he, as defendant, wanted to proceed pro se. The latter request, even if it had support in the record, would not have been clear and unequivocal.

Appellant, recognizing that the minutes only support a pro se request well into the trial (Br., p. 16), cites United States ex rel. Maldonado v. Denno, 348 F. 2d 12 (2d Cir. 1965), cert. denied 384 U.S. 1007 (1966). However, as pointed out in Maldonado, at 15:

> "Once the trial has begun with the defendant represented by counsel, however, his right thereafter to discharge his lawyer and to represent himself is sharply curtailed. There must be a showing that the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress, with considerable weight being given to the trial judges assessment of this balance".

A case almost on all-fours with appellant's and following the Maldonado rule is United States v. Catino, 403 F. 2d 491 (2d Cir. 1968), cert. denied 394 U.S. 1003. At 497, the factual pattern there discussed is that after three days of trial during which the Government had completed its direct case. The appellant asked to proceed pro se. This Court held that the trial court had not abused its discretion in denying the application. See also United States v. Ellenbogen, 365 F. 2d 982, 988-989 (2d Cir. 1966).

Contrary to appellant's contentions, Judge Kelly did weight the matter properly under Maldonado standards as applied in Catino and Ellenbogen. Thus, when the request to proceed pro se was made in this case (T. 291)*, the prosecution objected. The trial court ruled, in denying the motion (T. 294), that defendant was reluctant to go to trial; that defense counsel was skillful. Also noted was the fact that discharging Mr. McDonough would disrupt the trial. Argentine wanted to subpoena about six new witnesses and it would take up to three days to get them. On the other hand, there was no showing of any prejudice to the legitimate interests of the defendant. See Seale v. Hoffman, 306 F. Supp. 330 (N.D. Ill. 1969). Defendant did not know whether he was going to testify (T. 291). As in Ellenbogen, supra, at 989, it is clear that in light of the facts, dismissal of counsel would have been disrputive. Judge Kelly properly exercised his discretion, which is not a matter which this Court should review on habeas corpus. Even if this were an appeal of a federal conviction, the exercise of discretion by the trial judge would not be disturbed.



* Mr. McDonough, in making this motion, thought appellant was previously offered the opportunity and refused it.

In arguing for an extension of Faretta to an absolute constitutional right to proceed pro se at any time, appellant flies in the face of Faretta and the clear precedent in this Circuit such as Maldonado, Catino and Ellenbogen.

The record in the instant case is clear that appellant never made an unequivocal request before trial as did defendant Maldonado in United States ex rel. Maldonado v. Denno, supra, ibid. at fn. 1. Requests cannot be implied, Maldonado, see fn. 1 as to defendant DiBlasi.* Appellant was a difficult client and the trial judge (Kelly) cannot be faulted for not relieving assigned counsel at a time when the trial was almost completed.

## POINT II

### APPELLANT WAS NOT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

The appellant claims that he had an irreconcilable conflict with assigned counsel and therefore he was deprived of the effective assistance of counsel. Regardless of whether there was such a conflict, in a true sense, it does not follow that appellant was not afforded effective counsel. It should also be emphasized that this claim is nowhere to be found in the several amended petitions, especially the Second (95a).



* It is interesting to note that Judge Judd only discussed appellant's right to counsel of his own choice (159a).

The state court defendant who contends he was deprived of effective assistance of counsel must make a strong case, as set out in United States ex rel. Maselli v. Reincke, 383 F. 2d 129, 132 (2d Cir. 1967):

> "In order to assume constitutional proportions, 'a lack of effective assistance of counsel must be of such a kind as to shock the conscience of the court and make the proceedings a farce and mockery of justice. United States ex rel. Boucker v. Reincke, 341 F. 2d 977, 982 (2d Cir. 1965); quoting from United States v. Wight, 176 F. 2d 376, 379 (2d Cir. 1949), cert. denied 338 U.S. 950, 70 S. Ct. 478, 94 L. Ed. 586 (1950). If counsel's representation is so 'horribly inept' as to amount to a breach of his legal duty faithfully to represent his client's interest, Kennedy v. United States, 259 F. 2d 883, 886 (5th Cir. 1958), cert. denied 359 U.S. 994, 79 S. Ct. 1126, 3 L. Ed. 2d 982 (1959), there has been a lack of compliance with the fundamental fairness essential to due process".

The ineptness alluded to in Maselli of a failure to take an appeal when a co-defendant did and was successful in reversing his conviction. There must be a showing of prejudice to defendant. Maselli, at 132.

In the instant case, appointed counsel was not inept; rather he was highly skilled. No allegation or showing of prejudice is contained in the instant case. Far from supporting appellant's case, United States v. Morrissey, 461 F. 2d 666

(2d Cir. 1972) supports affirming the dismissal of the writ. The Morrissey case was a federal appeal which affirmed a conviction where a denial of effective assistance of counsel was claimed.

It should be emphasized that the court's suggestion in Morrissey as to inquiries on the dissatisfaction (within the federal criminal justice hierarchy) are not constitutional requirements. They were made in a supervisory role as the Appellate Division would to a state court. Here it is an established fact that Mr. McDonough's representation was not "horribly inept" but on the contrary highly professional in difficult circumstances. As in Morrissey, counsel here conferred and, investigated all possible leads. The only rational basis for the "somewhat strained relationship" to use Morrissey's term, was Argentine's insistence on subpoenaeing witnesses, some of whom were not available, others who had no relevant testimony and might damage defendant on cross-examination (144a, 159a). The patent conclusion is that Argentine simply was seeking to delay and confuse and this was the finding (63a) in the coram nobis hearing which was accepted by Judge Judd (158a). It should be emphasized there was communication between attorney and client.

In no way did appellant's purposeful lack of cooperation with assigned counsel prevent effective representation. It was competent under difficult cirucmstances (159a)*



* Appellant is always relieving attorneys, even those retained by him. His attorney on this appeal is the third retained (154a-156a). Assigned or retained, the pattern is the same.

There is no showing that any prejudice flowed from the situation. Maselli, supra. Cf. Brown v. Craven, 424 F. 2d 1166, 1170 (9th Cir. 1970). In the instant case the charge "was a simple one" (140a) and the People's case rather overwhelming (140a-145a).

Whatever effect Argentine's calculated and constant dissatisfaction had on Mr. McDonough's representation, it was harmless in a constitutional sense. Chapman v. California, 386 U.S. 18, 24 (1967).

## POINT III

### THERE WAS UTTERLY NO EVIDENCE OF PREJUDICIAL PRE-TRIAL PUBLICITY AFTER THE FIRST MISTRIAL.

The appellant's brief (Point III, pp. 33, et seq.) claims it is entitled to a hearing on prejudicial pre-trial publicity. This belated claim is not contained in the Amended Petition. The Second Amended Petition (117a) has a simple one sentence conclusory statement unsupported by any evidence. It is not surprising that the respondent's affidavit

in opposition and letter (135a) may have overlooked this miniscule point. In any event, Judge Judd was clearly correct on the record presented by appellant (159a):

> "It may be noted that there is no evidentiary support for the assertion in paragraph 5(i) of the second amended petition that stories about Argentine continued to appear in newspapers, radio and news broadcasts after January 7, 1964".

The only "evidence" annexed to the petition (and only the amended) was Exhibit "F", an undated clipping from Newsday. However, as stated by Judge Judd (139a), this item appearing January 7, 1964 resulted in Judge Kelly declaring the mistrial that day on Mr. McDonough's motion. Any prejudice, from one story, was cured and there is no claim or showing any similar story appeared in the newspapers or on the radio after that date. No such claim was made when trial started January 20, 1964.

The instant case obviously had no overtones of Sheppard v. Maxwell, 384 U.S. 333 (1966) or even Estes v. Texas, 381 U.S. 532 (1965). There is no allegation of massive, pervasive, and prejudicial publicity. What little there was, was cured by Judge Kelly granting a mistrial, on the basis of one article.

The matter was not pursued at the start of the new trial on January 20, 1975. While Argentine (T.M. 16) letter states "prejudicial articles" appearing, obviously the only one was the Newsday item.

Where there are no preliminary showing of any articles, it is hard to see what a hearing would produce. Judge Judd was correct, and even now appellant makes no greater showing.

## POINT IV

### THERE WAS NO DENIAL OF COMPULSORY PROCESS OF WITNESSES.

The appellant contends that he was denied compulsory process of witnesses. This is rather absurd as the defense could have subpoenaed any witness it desired. Actually, Argentine's argument is not with the Court, but with his attorney's judgment of how to handle a difficult case, made more difficult by appellant's obstructive tactics before and during trial. Thus, it must be recognized that throughout the trial appellant was represented by his assigned counsel, James McDonough of the then Public Defenders Office. This office provided the criminal defense of indigents. It has been found that appellant was indigent (Gibbons, J. [59a]).

While Argentine "presented" a motion for calling numerous witnesses, his attorney did not. Someone had to be responsible for trying the case and it was Mr. McDonough, not appellant. The testimony of Mr. McDonough at the state coram nobis hearing shows he had made an investigation. As a consequence, several "witnesses" could not be located and as to the others, their testimony was irrelevant or would not have helped the defense (C.N. 33-34). In fact, appellant had failed to provide the names of any possible defense witness until the last day before trial (C.N. 35). Who to subpoena as defense witnesses called for the exercise of Mr. McDonough's judgment. The most significant fact is that there is no showing that the prospective witnesses would have been helpful to the defendant. An attorney does not have to participate in his client's efforts to frustrate or confuse a trial.

As Judge Judd stated (159a):

> "With respect to the claim of 'denial of compulsory process', the investigator's report of interviews with prospective witnesses disclosed at best minor contradictions of prosecution witnesses on collateral points. At the same time, they might have tied Argentine into a bookmaking operation which was not a sympathetic presentation to a jury. Mr. McDonough's

determination not to call them was a reasonable one and did not deprive Argentine of a fair trial".

No one disputes the constitutional right to process for witnesses, but citation of Fay v. Noia, 372 U.S. 391, 439 (1962) is irrelevant. The discussion there involved waiver of appeals and deliberate by-pass of state appellate remedies of which we will have something to say, infra, Point VI. The decision of the defense to subpoena witnesses is not a matter of waiver, but trial strategy. In face of the record herein, it cannot be said that Mr. McDonough was not acting in his client's best interests as defense counsel.

We might add that the trial record fails to show that Argentine even wanted Dreiwitz subpoenaed (T.M. 313-323). It appears a complete afterthought.

## POINT V

APPELLANT WAS NOT DENIED THE RIGHT TO CROSS-EXAMINE ADVERSE WITNESSES.

The appellant makes several far-fetched claimed that he was denied his constitutional rights to confront his accusers and the right to cross-examine witnesses. It is submitted the brief does not seriously advance these contentions, but they can be answered briefly.

(1) Judge Aaron F. Goldstein was examined at the Gibbons coram nobis hearing in 1971 by appellant's then attorney Alan Manning Miller (C.N. 21-27 and (159a-160a). Judge Gibbons found (57a) that Judge Goldstein had made inquiries and Argentine was indigent and no attorney was retained. This is also in Judge Judd's decision (150a-151a).

(2) Lewis Horton was a witness at the trial and was extensively cross-examined by Argentine's attorney. As was stated by Judge Judd in discussing this claim (160a):

> "The proof that Lewis Horton had another alias and another misdemeanor conviction, would have been merely cumulative and does not constitute any constitutional defect in Argentine's trial".

The record failed to show any deliberate concealment of facts known to the District Attorney (160a).

The attack on Horton's credibility was thorough and in summation the Assistant District Attorney conceded as much (T.M. 366, 369). However, even if Horton's testimony was totally ignored, the evidence still was overwhelmingly for finding guilt.

Judge Judd did not discuss Wartenberg's alleged arrest some four months after the trial (112a-113a). The matter is so nebulous as not to be worthy of comment. However, it is only vaguely claimed that the police were perhaps investigating Wartenberg. What the District Attorney knew, or could have known, is not even alleged.

## POINT VI

### APPELLANT DELIBERATELY BY-PASSED STATE APPELLATE REMEDIES.

Judge Judd recognized (158a) that appellant's failure to appeal the original state conviction and several coram nobis decisions* might well allow dismissal of the application for failure to exhaust state remedies. 28 U.S.C. § 2254(b). On the other hand, the court below thought the failure of Justice Conable to render a decision in five years made further state court proceedings "ineffective".

With all due deference, it must be emphasized that after the matter was submitted to Justice Conable, appellant received a full evidentiary hearing and a decision before



* Judge Judd states (158a) that Argentine failed to appeal Judge Kelly's denial of coram nobis. This is not correct. Argentine did appeal. On appeal, the Appellate Division reversed and the remand resulted in Judge Gibbon's decision after an evidentiary hearing.

Judge Gibbons. This covered, or certainly could have covered, all issues*. The failure to appeal the Gibbons decision, we submit, constitutes "deliberate by-pass" of state appellate remedies within the meaning of Fay v. Noia, supra, 372 U.S. at 438-439. In the papers in opposition below (74a) it was stated that appellant had notice of the Gibbons decision, knew he could appeal, but did not because he was out on parole at the time. The source of this was Mr. Miller, the attorney who handled the hearing for Argentine. This obvious and deliberate failure to appeal was not denied by Argentine in any subsequent papers. See especially 97a.

## CONCLUSION

THE ORDER BELOW SHOULD BE AFFIRMED

Dated: New York, New York
October 6, 1975

Respectfully submitted,

Louis J. Lefkowitz

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* The decisions by Judge Altimari (33a-39a) also cover points in issue before Justice Conable.

STATE OF NEW YORK )
: SS.:
COUNTY OF NEW YORK )

MAGDALINE SWEENEY , being duly sworn, deposes and says that s he is employed in the office of the Attorney General of the State of New York, attorney for Respondent-Appellee herein. On the 6th day of October , 1975 , she served the annexed upon the following named person :

REISCH, KLAR, LANE, P.C.
1501 Franklin Avenue
Mineola, New York 11501

Attorneys in the within entitled proceeding by depositing 3 copies a true and correct ~~copy~~ thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney s at the address within the State designated by them for that purpose.

Magdaline Sweeney

Sworn to before me this
6th day of October , 1975

A. Seth Greenwald
Assistant Attorney General
of the State of New York